IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

C-H BUILDING ASSOCIATES, LLC,

Appellant,

v.

JOE H. DUFFEY, et al.,

Respondents.

DOCKET NUMBER WD73871

MISSOURI COURT OF APPEALS WESTERN DISTRICT

DATE: January 17, 2012

APPEAL FROM

The Circuit Court of Clay County, Missouri The Honorable Anthony Rex Gabbert, Judge

JUDGES

Division Three: Mitchell, P.J., and Smart and Howard, JJ.

CONCURRING.

ATTORNEYS

Thomas E. Hankins Gladstone, MO

Attorney for Appellant,

Michael P. Keleher Gladstone, MO

Attorney for Respondents.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

| C-H BUILDING ASSOCIAT | TES, LLC, |) | |
|------------------------|--------------|---|-----------------------|
| | Appellant, |) | |
| v. | |) | OPINION FILED: |
| | |) | January 17, 2012 |
| JOE H. DUFFEY, et al., | |) | • / |
| | |) | |
| | Respondents. |) | |

WD73871 Clay County

Before Division Three Judges: Karen King Mitchell, Presiding Judge, and

James M. Smart, Jr., and Victor C. Howard, Judges

C-H Building Associates, LLC ("C-H"), appeals the Circuit Court of Clay County's ("trial court") entry of summary judgment in favor of Joe and Mary Jane Duffey ("the Duffeys"). On appeal, C-H claims that the grant of summary judgment was in error because the trial court incorrectly interpreted this court's previous opinion as holding that C-H could not prove that the Duffeys had breached a real estate contract, when, in fact, the opinion merely held that C-H did not allege a breach sufficiently to support C-H's own motion for summary judgment.

This court reverses the trial court's entry of summary judgment in favor of the Duffeys, and remands this matter to the trial court for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Division Three holds:

Our prior opinion in this matter, which stated that "[t]he quoted contractual language did not constitute an allegation of an obligation the Duffeys had to C-H concerning Liberty Homes' performance under the purported lease," did not decide the issue of whether the real estate contract created an obligation on the part of the Duffeys to procure a lease between C-H and Liberty Homes. It merely held that C-H did not make sufficient allegations to support the trial court's grant of summary judgment in favor of C-H. As such, the law of the case doctrine does not justify the trial court's grant of summary judgment to the Duffeys on remand.

Nor can the trial court's grant of summary judgment to the Duffeys be justified by the doctrine of merger. Contractual provisions as to consideration are ordinarily not merged into the deed, nor does merger apply when mistake or fraud is alleged. Because C-H alleges that the Duffeys' obligation to procure a lease between C-H and Liberty Homes was part of the consideration, along with the property, for the purchase price, and because C-H also alleged that the Duffeys represented that a lease on the property with Liberty Homes existed, and that it was only after the purchase that C-H learned that there was no lease with Liberty Homes, merger is inapplicable.

Opinion by: Karen King Mitchell, Presiding Judge

January 17, 2012

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.